

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the SIRS
Appeal of Well-Springs
HealthCare, Inc.

**RECOMMENDED RULING
REGARDING DEPARTMENT'S
MOTION FOR SUMMARY
DISPOSITION**

This matter is pending before Administrative Law Judge Barbara L. Neilson on a motion for summary disposition filed by the Department of Human Services. Robert V. Sauer, Assistant Attorney General, 445 Minnesota Street, Suite 900, St. Paul, Minnesota 55101-2127, appeared on behalf of the Minnesota Department of Human Services. Rivette Graham, President, Well-Springs HealthCare, Inc., 1437 Marshall Avenue, Suite 203, St. Paul, Minnesota 55104, appeared on behalf of Well-Springs HealthCare, Inc., without benefit of counsel. The record with respect to the motions closed on November 18, 1998.

This Report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Recommendation contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact David Doth, Commissioner of Human Services, 2nd Floor Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155, for information about the procedures for filing exceptions and presenting argument.

Based upon all the files, records, and proceedings herein, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that:

1. The Motion for Summary Disposition filed by the Department be GRANTED and the hearing in this matter be canceled; and

2. The Department of Human Services recover from Well-Springs Healthcare, Inc., the amount of \$58,281.78, minus the amount of any restitution made by Paula Costilla to the Department of Human Services applicable to this overpayment.

Dated: December 17, 1998.

BARBARA L. NEILSON
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

The Department of Human Services has filed a motion for summary disposition in this matter. Summary disposition is the administrative equivalent of summary judgment.^[1] Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.^[2] A genuine issue is one that is not a sham or frivolous. A material fact is a fact whose resolution will affect the result or outcome of the case.^[3]

To successfully resist a motion for summary disposition, the nonmoving party must show that specific facts are in dispute which have a bearing on the outcome of the case.^[4] The existence of a genuine issue of material fact must be established by the nonmoving party by substantial evidence; general averments are not enough to meet the nonmoving party's burden under Minn. R. Civ. P. 56.05.^[5] The party opposing a motion for summary disposition must present specific evidence demonstrating that a material issue of fact remains for hearing. It is not sufficient to raise a "metaphysical doubt" as to an alleged fact issue or merely offer unsupported speculation.^[6] The evidence presented to defeat a summary judgment motion, however, need not be in a form that would be admissible at trial.^[7] The nonmoving party also has the benefit of the most favorable view of the evidence. All doubts and inferences must be resolved against the moving party.^[8]

This matter involves the provision of personal care services through Minnesota's Medical Assistance (Medicaid) program. Medicaid is a federal-state program that is intended to provide necessary medical assistance to qualified needy individuals. The cost of the program is shared by the federal government and the states that elect to participate.^[9] Personal care services under the Minnesota Medical Assistance program must be provided through "personal care provider organizations" ("PCPOs") that are

enrolled MA providers.^[10] PCPOs are responsible for hiring and supervising personal care attendants ("PCAs"), billing the MA program for the personal care services they provide, receiving payment from the Department of Human Services for those services, and paying PCAs for their work.^[11]

Based upon the pleadings and affidavits submitted in this matter, and construing the facts in the light most favorable to the Well-Springs, the underlying facts in this matter appear to be as follows. Well-Springs Healthcare, Inc., is enrolled in the MA program in Minnesota as a PCPO. A client of Well-Springs named George Costilla received personal care services from Well-Springs from August 4, 1994, through September 17, 1996.^[12] When Mr. Costilla's wife dealt with Well-Springs, she generally used the name of Paula Costilla. From August 4, 1994, through January 8, 1996, Well-Springs employed a woman to serve as Mr. Costilla's PCA who applied to Well-Springs using the name of Maria Gonzales.^[13] Well-Springs obtained copies of Ms. Gonzales' birth certificate, social security card, and a picture identification card.^[14] Ms. Gonzales actually was married to Mr. Costilla during that time. Her full name was, in fact, Paula Maria Gonzales Costilla.^[15] Well-Springs was not aware of the relationship between Mr. Costilla and the individual they knew as Maria Gonzales.^[16]

From approximately January 9, 1996, through September 17, 1996, Lupe Gonzales Costilla replaced Ms. Gonzales as Mr. Costilla's PCA. Lupe Gonzales Costilla is Mr. Costilla's daughter, although Well-Springs was not aware of that fact.^[17] In fact, when Well-Springs personnel questioned Lupe about having the same last name as Mr. Costilla, Lupe told them that she was not related to Mr. Costilla and was merely a friend.^[18] In addition, Lupe signed a letter with a statement denying any relation to Mr. Costilla.^[19] At no point during this period did Lupe obtain a relative hardship waiver that allowed MA reimbursement for the personal care services she provided to her father.^[20]

During 1996, Marque Nelson, an investigator in the Ramsey County Attorney's Office, conducted an investigation of Paula Maria Costilla a/k/a Maria Gonzales.^[21] The Ramsey County Attorney's Office requested and received information from Well-Springs about Ms. Gonzales during the fall of 1996.^[22] After the investigation was concluded, it was determined that Ms. Costilla had applied for and received public assistance between August, 1994, and January, 1996, without reporting income that she had earned under the name of Maria Gonzales as a PCA for Well-Springs.^[23]

On or about December 23, 1996, the Commissioner of Human Services issued a Notice of Agency Action to Well-Springs seeking recovery of \$74,143.36 in MA payments made by DHS to Well-Springs for care provided to Mr. Costilla between August 4, 1994, and December 23, 1996. The recovery was sought due to the nature of the relationship between Mr. Costilla and his PCAs.^[24] Well-Springs appealed the action proposed in the notice by letter dated January 21, 1997.^[25] The letter also challenged the Department's calculation of the MA payments received for care provided to Mr. Costilla.^[26] The Commissioner issued an Amended Notice of Agency Action on or about November 3, 1997, which reduced the amount of recovery sought to \$58,281.78.^[27] The Department contends, and Well-Springs has admitted, that Well-Springs was actually paid \$59,281.78. Because the Amended Notice of Agency Action

understated by \$1,000 the amount sought by the Department, the Department in this contested case proceeding is seeking to recover the understated amount of \$58,281.78.^[28]

In January of 1997, Ramsey County filed a criminal complaint against Paula Maria Costilla a/k/a Maria Gonzales charging her with three counts of felony theft for wrongfully obtaining public assistance (AFDC food stamps, and medical assistance).^[29] Ms. Costilla ultimately entered a plea of guilty to one of the felony counts.^[30] On March 31, 1997, she was sentenced to serve six days in jail, remain on probation for five years, and pay restitution to the County in the amount of \$84,845.^[31] She was also ordered to sign a confession of judgment, which she did in the amount of \$84,845.^[32] The restitution represented the public assistance that had been provided to Ms. Costilla and her family during the period of August, 1994, to January, 1996, that they would not have received had she properly reported her income in applying for the benefits. The restitution figure included \$324 for food stamps, \$5,884 for AFDC, and \$78,637 for medical assistance. Of the latter figure, \$69,028 was for medical assistance provided to George Costilla, \$5,231 was for medical assistance provided to Ms. Costilla, and \$4,278 was for services provided to her son.^[33]

At the time that Ms. Costilla was sentenced, she was already paying restitution to Ramsey County in connection with earlier determinations of public assistance overpayments. These overpayments arose from two fairly routine and common public assistance overpayments: (1) AFDC payments for the Costilla family continued into the month following the month in which the child left the home; and (2) eligibility determinations for family general assistance had not taken into account the unreported supplemental security income of Mr. Costilla. Neither of these two situations was considered fraudulent and no charges were brought against Ms. Costilla in connection with them.^[34]

Following the sentence and entry of judgment, the collection of the restitution ordered to be paid by Ms. Costilla was transferred to Donna Neihart, a support enforcement agent in the Civil Collections Unit of the Ramsey County Attorney's Office.^[35] Ms. Costilla's rate of restitution is currently set at \$30 per month. This rate will continue in the future unless a change in her income allows the rate to be increased.^[36] Ms. Costilla has the amount of \$593 remaining to be paid with respect to her earlier restitution obligations. As a result, she has not yet made any payments toward satisfying the \$84,845 restitution obligation arising from her March 1997 sentence.^[37] Under Ms. Costilla's current payment schedule, it is likely that she will make the first \$30 payment toward her \$84,845 restitution obligation sometime in the year 2000.^[38]

Restitution payments made to Ramsey County will in turn be transferred to the Minnesota Department of Human Services (with respect to the AFDC and MA benefits) or the U.S. Department of Agriculture (food stamps benefits) as appropriate.^[39] State and federal laws permit counties to receive incentive payments for recovering public assistance overpayments. The amount of the incentive varies with the program. For MA overpayments, the incentive payment is approximately 24% of the total recovery; for food stamp fraud, the incentive payment is 39% of the total recovery; and for AFDC, the

incentive payment is 50% of the total recovery.^[40] When restitution is being collected for multiple programs, it is the practice of the Ramsey County Attorney's Office to apply monthly payments first toward reimbursing the program for which the incentive payments to the County are the highest. If the amount owed to a particular program is small, it is the practice of the County to pay off the amount owed to that program in its entirety where possible.^[41] Thus, in connection with Ms. Costilla's situation, the County will first apply any monthly restitution payments received from Ms. Costilla to retire the amount owed for AFDC overpayments for which the county would receive a 50% incentive payment. After AFDC has been repaid, the monthly payment would be used to first repay the food stamp overpayment (if an amount is still due). Finally, the monthly payments would begin to be applied toward reducing the MA overpayment.^[42]

In addition to the monthly payments, Ramsey County has placed Ms. Costilla on revenue recapture, thereby permitting any money that would otherwise be paid to Ms. Costilla by the state (such as state income tax refunds, renter's credit, and lottery proceeds) to instead be forwarded to Ramsey County.^[43] It is uncertain whether any funds will be received by the County through revenue recapture.^[44] Pursuant to the general practice of the Ramsey County Attorney's Office, funds recovered through revenue recapture are used to repay amounts owed to state non-cash programs.^[45] If, in fact, the County receives revenue recapture payments, such funds would first be applied toward eliminating the \$324 food stamp overpayment. Additional amounts would then be used to reduce the balance owed for MA overpayments. If the MA overpayments were ever reduced to zero and an amount was still owing with respect to AFDC, further revenue recapture would be applied toward that balance.^[46]

In its Motion for Summary Disposition, the Department asserts that there are no facts in dispute and argues that the Department is entitled to an order granting summary disposition in its favor. DHS contends that the only issue is the purely legal issue of whether the personal care services provided to Mr. Costilla by his wife and daughter were eligible for MA payment. The Department points out that federal and state law categorically prohibit payment for personal care services provided by the client's spouse and permit payment for personal care services provided by the client's adult child only if a waiver has been granted. The Department further contends that, regardless of whether Well-Springs knew of the relationship between Mr. Costilla and his PCAs, Well-Springs was not entitled to payment for the services they provided under applicable federal and state law. The Department asserts that the applicable statutes do not provide any exception for instances in which the PCPO did not know that the person it hired as a PCA was related to the client and argues that it would not be appropriate to establish such an exception. DHS argues that recovery is supported by a recent Commissioner's Order.^[47] The Department also asserts that the fact that Ms. Costilla has been ordered to provide restitution should have no bearing on the Department's right to recover the overpayments made to Well-Springs for the PCA services provided to George Costilla by his wife and daughter. The Department stressed that the "DHS would not recover and retain the same money from both Well-Springs and Ms. Costilla."^[48]

In response, Well-Springs emphasizes that it was not aware of the relationship between Mr. Costilla, Paula Maria Gonzales Costilla, and Lupe Costilla. Well-Springs contends that it made reasonable inquiries into whether these individuals were related and relied upon the responses they provided. It argues that any restitution should properly come from Paula Costilla and maintains that the monetary recovery sought by the Department would force its company to go out of business. Well-Springs does not contend that there are any genuine issues of material fact remaining for hearing in this case.

The federal Medicaid statute, in defining “medical assistance,” lists among those services that are covered “personal care services furnished to an individual who is not an inpatient or resident of a [facility] that are (A) authorized for the individual by a physician in accordance with a plan of treatment . . . , (B) provided by an individual who is qualified to provide such services and who is not a member of the individual’s family, and (C) furnished in a home or other location.”^[49] The Minnesota statutes relating to MA coverage of personal care services contain similar prohibitions. Minn. Stat. § 256B.0625, subd. 19a (1996), provides that “[p]ersonal care services may not be reimbursed if the personal care assistant is the spouse . . . of the recipient”^[50] In addition, Minn. Stat. § 256B.0627, subd. 4(b)(4)(1996), specifies that “personal care services that are not eligible for payment” include “services provided by the recipient’s spouse”

Based upon additional language contained in the same statutory provisions, it is also apparent that MA will not pay for personal care services provided by the recipient’s adult child unless a waiver has been obtained. Minn. Stat. § 256B.0625, subd. 19a, provides that “adult children of the recipient . . . may be reimbursed for personal care services if they are not the recipient’s legal guardian and are granted a waiver under section 256B.0627.” Similarly, Minn. Stat. § 256B.0627, subd. 4(b)(10), states that personal care services provided by “adult children . . . of the recipient” are not eligible for payment, unless the relative satisfies one of the hardship criteria specified in the statute and “the commissioner waives this requirement”^[51]

The plain and unambiguous language of these statutory provisions, taken together, makes it clear that MA will not pay for personal care services provided by the spouse of the person receiving the services or by an adult child in the absence of a formal waiver. Well-Springs does not dispute that Paula Gonzalez Costilla was, in fact, Mr. Costilla’s wife or that Lupe was, in fact, Mr. Costilla’s daughter. Even assuming, as Well-Springs contends, that Well-Springs did not know of the relationship between Mr. Costilla, Paula, and Lupe, such lack of knowledge does not overcome the clear statutory prohibition against providing MA payment for the personal care services of a spouse or daughter.

Minn. Stat. § 256B.064, subd. 1a, authorizes the Department to recover money erroneously paid to an MA provider under certain circumstances, including “fraud, theft, or abuse in connection with the provision of medical care to recipients of public assistance” The Department has argued in the present case that it is entitled to recover the improper payments in this matter from Well-Springs regardless of whether

Well-Springs knew it was submitting inappropriate billings (thereby committing fraud) or should have known (thereby committing possible abuse). The Department contends that the submission of bills that were not entitled to MA payment constituted an error on the part of Well-Springs and that the Department thus is entitled to recover under the authority of Minn. R. 9505.0465, subp. 1(A). That rule, which was originally promulgated by the Department in 1987 and remains in effect at the present time, explicitly authorizes the Department to recover MA funds paid to a provider if the Department “determines that the payment was obtained fraudulently or erroneously” and expressly authorizes monetary recovery for “intentional and unintentional error on the part of the provider”^[52] The Commissioner of Human Services recently rejected a provider’s challenge to this rule provision as exceeding its enabling legislation.^[53] The Commissioner emphasized in his decision that the rule was found to be within the Department’s statutory rulemaking authority at the time it was proposed. In addition, the Commissioner stressed that amendments to Minn. Stat. § 256B.064 in 1992 implicitly supported the Department’s ability to recover erroneous payments made to providers resulting from unintentional billing errors. The Commissioner further pointed out that the Supreme Court’s decision in the case of Brown v. Minnesota Department of Public Welfare permitted the recovery of money by the Department in a situation which appeared to reflect an unintentional billing error.^[54]

Relying solely on the facts not disputed by the Respondent, and viewing them in a light most favorable to the Respondent, the Administrative Law Judge is compelled to conclude that the Department is entitled to summary disposition in this matter. The plain language of the statutes governing the Minnesota MA program make it clear that Well-Springs is not entitled to payment for the services provided by Paula Gonzales Costilla or Lupe Costilla. The language of Minn. R. 9505.0465, subp. 1(A) explicitly authorizes the Department to recover funds that were paid due to unintentional error on the part of the provider. While it appears that Well-Springs was not aware of the relationship between Mr. Costilla and his PCAs, the applicable statutory and rule provisions simply do not permit exceptions to be made in such circumstances. In addition, if the approach urged by Well-Springs were to be adopted and the Department were to be precluded from recovering funds that were paid due to a provider’s unintentional error, such an exception could, potentially, render PCPOs less likely to ensure that the persons they hire as PCAs meet MA requirements. Thus, even though there is no evidence that Well-Springs knowingly failed to comply with MA requirements, recovery of the wrongfully-paid funds is still appropriate under Minn. R. 9505.0465, subp. 1(A).

The Administrative Law Judge is persuaded that Ms. Costilla’s restitution payments should not affect the ability of the Department to recover erroneous payments made to Well-Springs. Because a portion of the total amount the Department seeks to recover in this matter relates to services that were provided by Lupe Costilla outside the time period covered by the restitution order, any payments made by Paula Costilla will not restore to the DHS the money improperly spent to pay for Lupe’s services. Moreover, in light of Paula Costilla’s age, the amount of her monthly restitution payment, and Ramsey County practices concerning the application of restitution funds, it is highly unlikely that the DHS will ever recover from Ms. Costilla any amounts which

could be applied to reduce the remaining amount of the overpayments which the Department seeks to recover in this case.

In its supplemental memoranda in opposition to the motion, Well-Springs asserted that the State and Ramsey County should have been on notice that Ms. Costilla was prone to fraud given the fact that she was already making restitution payments at the time of her 1997 conviction for welfare fraud, and implied that the State and County should have been monitoring Ms. Costilla's involvement in public assistance programs. The Administrative Law Judge does not find this argument to be convincing. Based upon the second affidavit filed by Ms. Neihart, it is evident that Ms. Costilla's earlier overpayments were not the result of fraud. It thus does not appear that either Ramsey County or the State had any reason to monitor the actions of Ms. Costilla.

The Judge thus recommends that summary disposition be entered in favor of the Department in this matter. Due to the apparent small size of the company, the Department is urged to enter into a payment plan with Well-Springs that permits gradual repayment over a number of years in order to minimize the financial impact on the company.

B.L.N.

^[1] Minn. R. 1400.5500 (K).

^[2] *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); *Louwagie v. Witco Chemical Corp.*, 378 N.W.2d 63, 66 (Minn. App. 1985); Minn. R. Civ. P. 56.03.

^[3] *Illinois Farmers Insurance Co. v. Tapemark Co.*, 273 N.W.2d 630, 634 (Minn. 1978); *Highland Chateau v. Minnesota Department of Public Welfare*, 356 N.W. 2d 804, 808 (Minn. App. 1984).

^[4] *Hunt v. IBM Mid America Employees*, 384 N.W.2d 853, 855 (Minn. 1986).

^[5] *Id.*; *Murphy v. Country House, Inc.*, 307 Minn. 344, 351-52, 240 N.W.2d 507, 512 (1976); *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn. App. 1988).

^[6] See, e.g., *St. Paul Fire & Marine Insurance Co. v. Metropolitan Urology Clinic*, 537 N.W.2d 297, 300 (Minn. App. 1995).

^[7] *Carlisle*, 437 N.W.2d at 715 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986)).

^[8] See *Celotex*, 477 U.S. at 325; *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988); *Greaton v. Enich*, 185 N.W.2d 876, 878 (Minn. 1971); *Dollander v. Rochester State Hospital*, 362 N.W.2d 386, 389 (Minn. App. 1985).

^[9] 42 U.S.C. § 1396-1396v, particularly 42 U.S.C. § 1396b; Minn. Stat. Ch. 256B.

^[10] Minn. Stat. §§ 256B.04, subd.16, and 256B.0627, subd. 1(f). There are limited exceptions to this requirement that are not relevant in this case. See Minn. Stat. § 256B.04, subd. 16(b).

^[11] Minn. Stat. § 9505.0335, subp. 6 (1997).

^[12] Response to Request for Admissions No. 1.

^[13] Response to Supplemental Request for Admissions Nos. 1 and 2; see *also* Application for Employment attached to Request for Admissions as Ex. D.

^[14] See Exs. A-C attached to Well-Spring's memorandum in opposition to the motion.

^[15] Response to Supplemental Request for Admissions Nos. 2, 3; see also Exs. A-C attached to Request for Admissions.

^[16] Affidavit of Ramona G. Banks attached to Well-Springs' Memorandum in Opposition to Motion.

^[17] Response to Supplemental Request for Admissions No. 4; Response to Request for Admissions No. 8.

^[18] Response to Request for Admissions No. 8; Affidavits of Ray B. Graham, Robbie Williams, and Ramona G. Banks attached to Well-Springs' Memorandum in Opposition to Motion.

^[19] Affidavit of Robbie Williams attached to Well-Springs' Memorandum in Opposition to Motion.

^[20] Response to Request for Admissions No. 9.

^[21] Affidavit of Marque E. Nelson, ¶¶ 1-2.

^[22] See Memorandum in opposition to motion at 1; Exs. G, I attached to memorandum.

^[23] *Id.*, ¶ 3.

^[24] See Notice of and Order for Hearing, Ex. 1.

^[25] See Notice of and Order for Hearing, Ex. 2.

^[26] *Id.*

^[27] See Notice of and Order for Hearing, Ex. 3.

^[28] Response to Request for Admissions No. 3; Memorandum in Support of Motion at 4, n. 21.

^[29] Nelson Affidavit, ¶ 4.

^[30] *Id.*, ¶ 5; First Affidavit of Donna Neihart, ¶ 3.

^[31] Nelson Affidavit, ¶ 6; see *also* Ex. I attached to Memorandum in opposition to motion.

^[32] First Neihart Affidavit, ¶ 4.

^[33] *Id.*, ¶ 12; Nelson Affidavit, ¶¶ 7-8.

^[34] First Neihart Affidavit, ¶ 6; Second Affidavit of Donna Neihart, ¶¶ 2-4.

^[35] First Neihart Affidavit, ¶ 5.

^[36] *Id.*, ¶ 7.

^[37] *Id.*, ¶ 8-9.

[38] *Id.*, ¶ 10.

[39] *Id.*, ¶ 13.

[40] *Id.*, ¶¶ 14-15.

[41] *Id.*, ¶¶ 16, 18.

[42] *Id.*, ¶ 19.

[43] *Id.*, ¶ 11.

[44] *Id.*, ¶ 20.

[45] *Id.*, ¶ 17.

[46] *Id.*, ¶ 21.

[47] See *In the Matter of the SIRS Appeal of United Nursing and Health Care Services, Inc.*, OAH Docket No 103-1800-10816-2 (Commissioner's Order issued May 13, 1998).

[48] DHS Supplemental Memorandum at 6.

[49] 42 U.S.C. § 1396d(a)(24) (emphasis added).

[50] Emphasis added.

[51] Emphasis added. In addition, Minn. R. 9505.0335, subp.10, specifies that personal care service provided by "a person who is . . . related to the recipient as spouse . . . or child" is "not covered under medical assistance as personal care services."

[52] Minn. R. 9505.0465, subp. 1(A) (emphasis added). In 1997, the Legislature amended Minn. Stat. § 256B.064, subd. 1c, to add language permitting monetary recovery "from a vendor who has been improperly paid . . . as a result of a vendor or departmental error, regardless of whether the error was intentional."

[53] *In the Matter of the SIRS Appeal of United Nursing and Health Care Services, Inc.*, OAH Docket No. 103-1800-10816-2 (Commissioner's Order issued May 13, 1998) (attached to Department's Reply Brief).

[54] *Id.* at 6-7. In *Brown v. Minnesota Department of Public Welfare*, 368 N.W.2d 906 (Minn. 1985), a physician submitted more than \$14,000 in claims during 1981-82 for weight reduction services he had provided to welfare recipients with a primary diagnosis of obesity. Under the medical assistance regulations in place at the time, weight reduction services were not covered unless the physician had received prior authorization to perform them. Dr. Brown had not received prior authorization. The Department of Public Welfare discovered the situation after an audit was conducted of doctors who received payment from the Department. The Department thereafter sought reimbursement from Dr. Brown. The Supreme Court held that the Department could, in fact, recover the erroneous payments from Dr. Brown. The Court determined that Dr. Brown's repeated submission of claims that were not reimbursable under the MA Program constituted "abuse" within the meaning of Minn. R. 9505.1750, subp. 2, and that recovery of the monies that were erroneously paid was thus permitted under Minn. Stat. § 256B.04. The Court further held that the Department was not estopped from recovering the funds, even though the Department paid more than 900 claims before it discovered the error, Dr. Brown was unaware of the prior authorization requirement, and Dr. Brown's office manager was left with the impression after a conversation with Department personnel that prior authorization was not required.

